EX. 6
APP. 064 - 066

Weinberg v. National Football League Players Association et al Doc. 14 Att. 3

RECEIVED DEC 1 6 1999

[redacted]

STANDARD REPRESENTATION AGREEMENT

This AGREEMENT made this 6th day of December, 1999, by and between Keith Washington (hereinafter "Player") and Steve Weinberg (hereinafter "Contract Advisor")

WITNESSETH:

In consideration of the mutual promises hereinafter made by each to the other, Player and Contract Advisor agree as follows:

1. General Principles

This Agreement is entered into pursuant to and in accordance with the National Football League Players Association (hereinafter "NFLPA") Regulations Governing Contract Advisors (hereinafter "the Regulations") effective December 1, 1994, and as amended thereafter from time to time.

2. Representations

Contract Advisor represents that in advance of executing this Agreement, he/she has been duly certified as a Contract Advisor by the NFLPA. Player acknowledges that the NFLPA certification of the Contract Advisor is neither a recommendation of the Contract Advisor, nor a warranty by NFLPA of the Contract Advisor's competence, honesty, skills or qualifications.

Contract Advisor hereby discloses that he/she (check one): [ ] represents or has represented [X] does not represent and has not represented NFL management personnel in matters pertaining to their employment by or association with any NFL club. (If Contract Advisor responds in the affirmative, Contract Advisor must attach a written addendum to this Agreement listing names and positions of those NFL Personnel represented).

3. Contract Services

Player hereby retains Contract Advisor to represent, advise, counsel, and assist Player in the negotiation, execution, and enforcement of his playing contract(s) in the National Football League.

In performing these services, Contract Advisor acknowledges that he/she is acting in a fiduciary capacity on behalf of Player and agrees to act in such manner as to protect the best interests of Player and assure effective representation of Player in individual contract negotiations with NFL Clubs. Contract Advisor shall be the exclusive representative for the purpose of negotiating player contracts for Player. However, Contract Advisor shall not have the authority to bind or commit Player to enter into any contract without actual execution thereof by Player. Once Player agrees to and executes his player contract, Contract Advisor agrees to also sign the player contract and send a copy (by facsimile or overnight mail) to the NFLPA and the NFL Club within 48 hours of execution by Player.

If Player and Contract Advisor have entered into any other agreements or contracts relating to services other than the individual negotiating services described in this Section, describe the nature of the other services covered by the separate agreements:

Marketing at 20%

4. Compensation for Services

If Contract Advisor succeeds in negotiating an NFL Player Contract acceptable to Player and signed by Player during the term hereof, Contract Advisor shall receive a fee of three percent (3%) of the compensation received by Player for each such playing season, unless a lesser percent (%) or amount has been agreed to by the parties and is noted in the space below.

The parties hereto have agreed to the following lesser fee:

N/A

In computing the allowable fee pursuant to this Section 4 the term "compensation" shall include only base salaries, signing bonuses, reporting bonuses, roster bonuses and any performance incentives actually received by Player. The term "compensation" shall not include any "honor" incentive bonuses (i.e. ALL PRO, PRO BOWL, Rookie of the Year), or any collectively bargained benefits.

harmless the NFLPA, its officers, employees and representatives from any liability whatsoever with respect to their conduct or activities relating to or in connection with this Agreement or such individual negotiations.

8. Disputes

Any and all disputes between Player and Contract Advisor involving the meaning, interpretation, application, or enforcement of this Agreement or the obligations of the parties under this Agreement shall be resolved exclusively through the arbitration procedures set forth in Section 5 of the NFLPA Regulations Governing Contract Advisors.

9. Notices

All notices hereunder shall be effective if sent by certified mail, postage prepaid to the following addresses: If to the Contract Advisor: See Below

If to the Player: [illegible] 546 Park View Drive Grand Prairie, TX 75652

10. Entire Agreement

This Agreement, along with the NFLPA Regulations, sets forth the entire agreement between the parties hereto and cannot be amended, modified or changed orally. Any written amendments or changes shall be effective only to the extent that they are consistent with the Standard Representation Agreement as approved by the NFLPA.

11. Filing

This contract is signed in triplicate. Contract Advisor agrees to deliver one (1) copy to the NFLPA within five (5) days of its execution; one (1) copy to the Player; and retain one (1) copy for his/her files. Contract Advisor further agrees to submit any other executed agreements between Player and Contract Advisor to NFLPA.

12. Term

The term of this Agreement shall begin on the date hereof and shall continue for the term of any player contract executed pursuant to this Agreement; provided, however, that either party may terminate this Agreement effective five (5) days after written notice of termination is given to the other party. Notice shall be effective for purposes of this paragraph if sent by certified mail, postage prepaid, return receipt requested to the appropriate address contained in this Agreement.

If termination pursuant to the above provision occurs prior to the completion of negotiations for an NFL player contract(s) acceptable to Player and signed by Player, Contract Advisor shall be entitled to compensation for the reasonable value of the services performed in the attempted negotiation of such contract(s) provided such services and time spent thereon are adequately documented by Contract Advisor. If termination pursuant to the above provision occurs after Player has signed an NFL player contract negotiated by Contract Advisor, Contract Advisor shall be entitled to the fee prescribed in Section 4 above for negotiation of such contract(s).

In the event that Player is able to renegotiate any contract(s) previously negotiated by Contract Advisor prior to expiration thereof, Contract Advisor shall still be entitled to the fee he/she would have been paid pursuant to Section 4 above as if such original contract(s) had not been renegotiated. If Contract Advisor represents Player in renegotiation of the original contract(s), the fee for such renegotiation shall be based solely upon the amount by which the compensation in the renegotiated contract(s) exceeds the compensation in the original contract(s), whether or not Contract Advisor negotiated the original contract(s).

If the Contract Advisor's certification is suspended or revoked by the NFLPA or the Contract Advisor is otherwise prohibited by the NFLPA from performing the services he/she has agreed to perform herein, this Agreement shall automatically terminate, effective as of the date of such suspension or termination.

13. Governing Law

This Agreement shall be construed, interpreted and enforced according to the laws of the State of Texas

Contract Advisor and Player recognize that certain state statutes regulating sports agents require specified language in the player/agent contract. The parties therefore agree to the following additional language as required by state statute:

Advisor shall not have the authority to bind or commit Player to enter into any contract without actual execution thereof by Player. Once Player agrees to and executes his player contract, Contract Advisor agrees to also sign the player contract and send a copy (by facsimile or overnight mail) to the NFLPA and the NFL Club within 48 hours of execution by Player.

If Player and Contract Advisor have entered into any other agreements or contracts relating to services other than the individual negotiating services described in this Section, describe the nature of the other services covered by the separate agreements:

Marketing at 20%.

4. Compensation for Services

If Contract Advisor succeeds in negotiating an NFL Player Contract acceptable to Player and signed by Player during the term hereof, Contract Advisor shall receive a fee of three percent (3%) of the compensation received by Player for each such playing season, unless a lesser percent (%) or amount has been agreed to by the parties and is noted in the space below.

The parties hereto have agreed to the following lesser fee:

N/A.

In computing the allowable fee pursuant to this Section 4 the term "compensation" shall include only base salaries, signing bonuses, reporting bonuses, roster bonuses and any performance incentives actually received by Player. The term "compensation" shall not include any "honor" incentive bonuses (i.e. ALL PRO, PRO BOWL, Rookie of the Year), or any collectively bargained benefits.

5. Payment of Contract Advisor's Fee

Contract Advisor shall not be entitled to receive any fee for the performance of his/her services pursuant to this Agreement until Players receives the compensation upon which the fee is based.

However, Player may enter into an agreement with Contract Advisor to pay any fee attributable to deferred compensation due and payable to Player in advance of when the deferred compensation is paid to Player, provided that Player has performed the services necessary under his contract to entitle him to the deferred compensation. Such fee shall be reduced to its present value as specified in the NFLPA Regulations (see Section 4(b)). Such an agreement must also be in writing, with a copy sent to the NFLPA.

In no case shall Contract Advisor accept, directly or indirectly, payment of any fees hereunder from Player's club. Further, Contract Advisor is prohibited from discussing any aspect of his/her fee arrangement hereunder with any club.

6. Expenses

~~Player shall reimburse Contract Advisor for all reasonable and necessary communication expenses (i.e., telephone and postage) actually incurred by Contract Advisor in connection with the negotiation of Player's NFL contract. Player also shall reimburse Contract Advisor for all reasonable and necessary travel expenses actually incurred by Contract Advisor during the term hereof in the negotiation of Player's NFL contract, but only if such expenses and approximate amounts thereof are approved in advance by Player. Player shall promptly pay all such expenses upon receipt of an itemized, written statement from Contract Advisor.~~

After each NFL season and prior to the first day of May following each season for which Contract Advisor has received fees and expenses, Contract Advisor must send to Player (with a copy to the NFLPA) an itemized statement covering the period March 1 through February 28th or 29th of that year. Such statement shall set forth both the fees charged to Player for, and any expenses incurred in connection with, the performance of the following services: (a) individual player salary negotiations, (b) management of the player's assets, (c) financial, investment, legal, tax and/or other advice, and (d) any other miscellaneous services.

7. Disclaimer of Liability

Player and Contract Advisor agree that they are not subject to the control or direction of any other person with respect to the timing, place, manner or fashion in which individual negotiations are to be conducted pursuant to this Agreement (except to the extent that Contract Advisor shall comply with NFLPA Regulations) and that they will save and hold

[illegible] ations for an NFL player contract(s) acceptable to Player and signed by Player, Contract Advisor shall be entitled to compensation for the reasonable value of the services performed in the attempted negotiation of such contract(s) provided such services and time spent thereon are adequately documented by Contract Advisor. If termination pursuant to the above provision occurs after Player has signed an NFL player contract negotiated by Contract Advisor, Contract Advisor shall be entitled to the fee prescribed in Section 4 above for negotiation of such contract(s).

In the event that Player is able to renegotiate any contract(s) previously negotiated by Contract Advisor prior to expiration thereof, Contract Advisor shall still be entitled to the fee he/she would have been paid pursuant to Section 4 above as if such original contract(s) had not been renegotiated. If Contract Advisor represents Player in renegotiation of the original contract(s), the fee for such renegotiation shall be based solely upon the amount by which the compensation in the renegotiated contract(s) exceeds the compensation in the original contract(s), whether or not Contract Advisor negotiated the original contract(s).

If the Contract Advisor's certification is suspended or revoked by the NFLPA or the Contract Advisor is otherwise prohibited by the NFLPA from performing the services he/she has agreed to perform herein, this Agreement shall automatically terminate, effective as of the date of such suspension or termination.

13. Governing Law

This Agreement shall be construed, interpreted and enforced according to the laws of the State of Texas

Contract Advisor and Player recognize that certain state statutes regulating sports agents require specified language in the player/agent contract. The parties therefore agree to the following additional language as required by state statute:

EXAMINE THIS CONTRACT CAREFULLY BEFORE SIGNING IT

IN WITNESS WHEREOF, the parties hereto have hereunder signed their names as hereinafter set forth.

[signature]
(CONTRACT ADVISOR)

6514 Riverview Lane	Dallas, TX 75248
(Street Address)	(City, State, Zip Code)

(972) 931-8017	931-8018
(Telephone)	(Fax Number)

[signature]
(PLAYER)

4321 Red River, #164	Grand Prairie, TX
(Street or P.O. Box)	(City, State, Zip Code)

(972) 394-6979	(972) 263-2250 -1117
(In-Season Telephone)	(Off-Season Telephone)

12-18-72	Nevada-Las Vegas
(Player's Birthdate)	(College/University)

Print Name and Signature of PARENT or GUARDIAN (if Player is under 21 Years of Age)

(Address and Telephone)

WHITE COPY – PLAYER YELLOW COPY – CONTRACT ADVISOR PINK/GOLDENROD – NFLPA

PLAYER'S AUTHORIZATION FORM

DATE: December 3, 1999

TO: Ozzie Newsome

TEAM: Baltimore Ravens

FROM: KEITH WASHINGTON

This is to advise you that effective as of this date, I have authorized **STEVEN A. WEINBERG** to act as my exclusive contract advisor (representative) for the purpose of negotiating for inclusion in a Uniform Player's Contract the salary, bonuses and Special Covenants, if any, which actually or potentially provide additional benefits to me as defined in the Basic Agreement and the interpretations thereof, subject to my right to approve the results of such negotiations through execution by me of such contract.

I ask you to please direct any and all contract offers as well as any other communication concerning my employment, no matter how confidential they might appear to be, to my representative, Steven A. Weinberg. His address is as follows:

STEVEN A. WEINBERG
6514 RIVERVIEW LANE
DALLAS, TEXAS 75248

(972) 931-8617

(972) 931-8618 (FAX)

This authorization is the only valid authorization made by me. In the event there is a conflicting authorization on file from me, this is the only authorization that shall control. It shall be irrevocable, and as such, it shall be binding upon me and shall remain in effect until the next aforementioned Uniform Player's Contract is executed by me.

[signature] Dec 6, 1999

PLAYER DATE

cc: NFLPA

EX. 7
APP. 067 - 088

NATIONAL FOOTBALL LEAGUE PLAYERS ASSOCIATION

In The Matter of Arbitration Between NATIONAL FOOTBALL LEAGUE PLAYERS ASSOCIATION DISCIPLINARY COMMITTEE and STEVEN WEINBERG	Case No. NFLPA 03-D1

DECISION AND ORDER OF

ROGER P. KAPLAN, ESQ., ARBITRATOR

APPEARANCES:

For NFLPA Disciplinary Committee: Richard Berthelsen, Esq.

For Steven Weinberg: Wayne G. Travell, Esq.

STATEMENT OF THE CASE

On February 7, 2003, Mr. Steven Weinberg (Weinberg) appealed the National Football League Players Association (NFLPA) Disciplinary Committee's decision to immediately revoke his certification on February 6, 2003. I held a hearing on a Motion to Stay the discipline on Tuesday, February 18, 2003 in Alexandria, Virginia. Both parties had the opportunity to examine and cross-examine witnesses as well as present evidence and argument in support of their respective positions. A verbatim transcript was made of the proceeding.

ISSUES

Upon consideration of the record, I find that the issues are:

1. Whether the February 6, 2003 decertification of Steven Weinberg by the Disciplinary Committee is stayed by his appeal on February 7, 2003?

2. If so, what is the appropriate remedy?

PERTINENT PROVISIONS OF THE NFL COLLECTIVE BARGAINING AGREEMENT (1993-2005)

Article II - Governing Agreement

Section 1. The provisions of this Agreement supersede conflicting portions of the NFL Player Contract, the NFL Constitution and Bylaws, or any other document affecting terms and conditions of employment of NFL players, and all players, Clubs, the NFLPA, the NFL, and the Management Council will be bound hereby. The provisions of the Stipulation and Settlement Agreement, *as amended*, in White v. NFL, No. 4-92-906 (D. Minn.) ("Settlement Agreement"), shall supersede any conflicting provisions of this Agreement.

Article VI - NFLPA Agent Certification

Section 1. Exclusive Representation: The NFLMC and the Clubs recognize that the NFLPA regulates the conduct of agents who represent players in individual contract negotiations with the Clubs. The NFLMC and the Clubs agree that the Clubs are prohibited from engaging in individual contract negotiations with any agent who is not listed by the NFLPA as being duly certified by the NFLPA in accordance with its role as exclusive bargaining agent for NFL players. The NFLPA shall provide and publish a list of agents who are currently certified in accordance with its agent regulation system, and shall notify the NFLMC and the Clubs of any deletions or additions to the list pursuant to its procedures. The NFLPA agrees that it shall not delete any agent from its list until that agent has exhausted the opportunity to appeal the deletion to a neutral arbitrator pursuant to its agent regulation system, except: (i) where an agent has failed to pass a written examination given by the NFLPA; or (ii) in extraordinary circumstances where the NFLPA's investigation discloses that the agent's conduct is of such a serious nature as to justify immediately invalidating the agent's certification. The NFLPA shall have the sole and exclusive authority to determine the number of agents to be certified, and the grounds for withdrawing or denying certification of an agent. * * *

Article LV - Miscellaneous

Section 14. Binding Effect: This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their heirs, executors, administrators, representatives, agents, successors and assigns and any corporation into or with which any corporate party hereto may merge or consolidate.

PERTINENT NFLPA REGULATIONS GOVERNING CONTRACT ADVISORS (as Amended June 1, 1998)

SECTION 3: STANDARD OF CONDUCT FOR CONTRACT ADVISORS

A. General Requirements

. . . a Contract Advisor shall:

* * *

(15) Become and remain sufficiently educated with regard to NFL structure and economics, applicable Collective Bargaining Agreements and other governing documents, basic negotiating techniques, and

developments in sports law and related subjects. To ascertain whether the Contract Advisor is sufficiently educated with regard to the above-related subjects, the NFLPA may require a Contract Advisor to successfully pass a Contract Advisor examination;

SECTION 6: OVERSIGHT AND COMPLIANCE PROCEDURE

E. Appeal

The Contract Advisor against whom a Complaint has been filed under this Section may appeal the Disciplinary Committee's proposed disciplinary action to the outside arbitrator by filing a written Notice of Appeal with the arbitrator within twenty (20) days following Contract Advisor's receipt of notification of the proposed disciplinary action. The timely filing of a Notice of Appeal shall result in an automatic stay of any disciplinary action.

* * * The failure of Contract Advisor to file a timely appeal shall be deemed to constitute an acceptance of the discipline which shall then promptly be imposed.

FACTS

This proceeding concerns Weinberg's Motion to Stay his decertification by the National Football League Players Association Disciplinary Committee (Disciplinary Committee) on February 6, 2003. The Disciplinary Committee refused to stay that decertification based on Weinberg's February 7, 2003 appeal of its decision. As noted, a hearing on this motion was held on February 18, 2003. At the hearing, the following evidence was adduced.

Steven Weinberg (Weinberg) has been an NFLPA certified Contract Advisor (Advisor) since 1982. His office is in Dallas, Texas.

Section 6E of the NFLPA Regulations Governing Contract Advisors (NFLPA Regulations) provides, in relevant part:

> The Contract Advisor against whom a Complaint has been filed under this Section may appeal the Disciplinary Committee's proposed disciplinary action to the outside arbitrator by filing a written notice of appeal within twenty (20) days following Contract Advisor's receipt of notification of the proposed disciplinary action. The timely filing of a Notice of Appeal shall result in an automatic stay of any disciplinary action. (Emphasis supplied)

Prior to its amendment in 2000 (see below), Article VI, Section 1 of the NFL Collective Bargaining Agreement (CBA) provided, in relevant part:

> Agent Certification
>
> Section 1. * * * The NFLPA agrees that it shall not delete any agent from its list until that agent has exhausted the opportunity to appeal the deletion to a neutral arbitrator pursuant to its agent regulation system. * * *

In 1999, the Disciplinary Committee disciplined Tank Black, a Contract Advisor, for fraud and misappropriation of players' monies. However, pursuant to the CBA and NFLPA Regulations in existence at that time, the Disciplinary Committee was unable to decertify Black immediately. Thus, despite the imposition of disciplinary action, Black continued to represent players until the ultimate resolution of his case, by virtue of his appeal.

On May 12, 2000, the NFLPA Board of Player Representatives (Board) issued a memorandum to Contract Advisors, the subject of which was "2000 Amendments to the NFLPA Regulations Governing Contract Advisors". The memorandum provided, in relevant part:

> At the NFLPA Board of Player Representatives meetings this past spring, the Board of Player Representatives passed the following resolution amending the NFLPA Regulations Governing Contract Advisors:
>
> **RESOLVED** that the NFLPA Regulations Governing Contract Advisors be amended as follows:
>
> 1. Provide that in the extraordinary circumstances where the Disciplinary Committee's investigation discloses that the Contract Advisor's conduct is of such a serious nature as to justify immediately invalidating his/her certification, the Disciplinary Committee is authorized to take such action. In such event, the Contract Advisor may appeal that action in the same manner as he/she could appeal from a proposed suspension or termination set forth in Section 6 of the Regulations.
>
> * * *

These amendments were effective as of March 19, 2000[1].

Mr. Trace Armstrong, President of the NFLPA, testified that the Board did not intend that the stay established in Section 6E

1 For ease of reference, this amendment will be referred to as "the March 2000 Amendment".

would apply "in this circumstance", that is, the immediate revocation of a Contract Advisor's certification pursuant to March 2000 Amendment. The following questions and answers at the February 18, 2003 hearing are instructive:

> Berthelsen: When you passed this resolution, you didn't intend to prevent any appeals, even if the discipline went into effect before the appeal, did you?
>
> Armstrong: The intent of the rule was to be able to prevent an agent from continuing an activity until his appeal was heard. The intent of the rule was to immediately revoke an agent's certification based on what the committee considered serious misconduct and still allow that person to appeal down the road.
>
> Berthelsen: Pursuant to Section 6E?
>
> Armstrong: Right.
>
> Berthelsen: But not the sentence of 6E that grants an automatic stay?
>
> Armstrong: No.

Armstrong testified that the March 2000 Amendment as passed by the Board was not "self-enforcing". He indicated that Article VI of the CBA needed an amendment, apparently so as to conform to the March 2000 Amendment adopted by the Board.

In August 2000, the NFL and NFLPA amended their CBA to provide, in relevant part:

Agent Certification

> Section 1. * * * The NFLPA agrees that it shall not delete any agent from its list until that agent has exhausted the opportunity to appeal the deletion to a neutral arbitrator pursuant to its agent regulation system, except: (i) where an agent has failed to pass a written examination given by the NFLPA; or (ii) in extraordinary circumstances where the NFLPA's investigation discloses that the agent's conduct is of such a serious nature as to justify immediately invalidating the agent's certification. * * *

The NFLPA maintains an Internet web site on which is contained a wide range of information regarding the NFLPA, including the NFLPA Regulations. There is dispute in the record regarding when and whether the stated amendments appeared on the web site and/or when and whether Weinberg had notice of the amendments.

In a letter dated November 19, 2002, the Disciplinary Committee filed a Disciplinary Complaint (Complaint) against Weinberg pursuant to Section 6B of the NFLPA Regulations[2]. At the February 18th hearing, Berthelsen asserted that he received a confirmation that a facsimile (fax) transmission of the Complaint was received by Weinberg. By letter dated December 19, 2002, Weinberg asked the NFLPA whether his receipt of the

2 The merits of that Complaint and of Weinberg's defenses thereto are not the subject of this proceeding. The Disciplinary Committee's allegations will be addressed on the merits in an arbitration hearing scheduled for April 2003.

By letter dated December 30, 2002, Harvey Steinberg, Esq. (Weinberg's former attorney) advised the NFLPA that:

> . . . [Weinberg] hereby denies all allegations in the [Complaint], and will file a supplemental response by January 10, 2003, explaining his position.

On January 27, 2003, Steinberg filed a response to the Complaint on behalf of Weinberg, which was received by the NFLPA on approximately January 29, 2003.

In a letter dated February 6, 2003, the Disciplinary Committee advised Weinberg that it had decided:

> . . . to immediately revoke your certification as an NFLPA Contract Advisor pursuant to Section 6B of the NFLPA Regulations Concerning Contract Advisors because of the conduct described in the Disciplinary Complaint filed against you on November 19, 2002. In making its decision, the Committee considered all of the information presented by you and your representatives in the conference call today.

On February 15, 2003, Wayne G. Travell, Esq. filed a Motion to Stay Weinberg's decertification pending the final resolution of his appeal dated February 7, 2003. The NFLPA filed a response on February 17, 2003. Based on the inability of the parties to resolve this matter amicably, it proceeded to hearing as set forth earlier in this decision.

DISCUSSION AND ANALYSIS

Article II, Section 1 of the CBA establishes the CBA as the document which governs all employment terms and conditions for players in the NFL. By its negotiated terms, the provisions of the CBA:

> supersede conflicting portions of the NFL Player Contract, the NFL Constitution and Bylaws, or any other document affecting terms and conditions of employment of NFL players, and all players, Clubs, the NFLPA, the NFL, and the Management Council will be bound hereby. The provisions of the Stipulation and Settlement Agreement, *as amended*, in White v. NFL, NO. 4-92-906 (D. Minn.) ("Settlement Agreement"), shall supersede any conflicting provisions of this Agreement.

Article VI, Section 1 of the CBA recognizes that the NFLPA regulates the conduct of Contract Advisors, bars the NFL Clubs from dealing with Contract Advisors who are not certified by the NFLPA and gives the NFLPA "sole and exclusive authority to determine the number of agents to be certified, and the grounds for withdrawing or denying certification" of a Contract Advisor. Thus, the dealings of Contract Advisors are subject to the provisions in the CBA.

In Reggie White v. National Football League, Civ. No. 4-92-906 (D. Minn., March 30, 2000), Judge Doty held that NFLPA certified Contract Advisors were "bound by the terms of the CBA

. . . ." Id. at 18. He first found that the parties to the CBA intended to bind Contract Advisors to that agreement. Id. at 9. Judge Doty concluded that Contract Advisors "consented to be bound by the terms of the CBA . . . ." Id. at 13, noting that Advisors negotiate player contracts "only because the NFLPA [had] delegated a portion of its exclusive representational authority to [Contract Advisors]". Id. He found an "economic interrelationship" existed between players and Contract Advisors such that "it is not legally tenable for player agents to claim that they are strangers to the core legal agreements [the CBA and another agreement that is not relevant to Weinberg's case] entered into by the NFLPA and the players" Id. at 14. He also found that Contract Advisors enjoy considerable benefits that flow directly from the CBA. Judge Doty concluded:

> When third parties like the [Contract Advisors] silently reap the benefits of contractual agreements like the CBA and SSA, they cannot later disclaim the obligations these agreements impose on them. Id. at 14.

In addition, Judge Doty pointed out that Contract Advisors were required by the Section 3.A(15) of the NFLPA Regulations to become familiar with the "applicable Collective Bargaining Agreements and other governing documents".

Furthermore, the explicit terms of Article LV, Section 14 of the CBA are binding on "representatives [and] agents". This is additional evidence that the activities of Contract Advisors are governed by the CBA.

Therefore, because Contract Advisors are subject to the provisions in the CBA (including Article VI), because the CBA is binding upon them according to Article LV, Section 14, and based on the analysis in Reggie White v. National Football League, I conclude that the CBA, specifically Article VI, Section 1 as amended in 2000, applies to Contract Advisors.

The evidence established that the March 2000 resolution of Board regarding "immediately invalidating" the certification of a Contract Advisor constituted an amendment to the NFLPA Regulations. By its terms, this amendment clearly applies to Contract Advisors.

Thus, both the 2000 amendment to the CBA and the March 2000 Amendment to the NFLPA Regulations established a new procedure whereby the Disciplinary Committee was authorized to decertify a Contract Advisor "immediately" when "extraordinary circumstances" existed that warranted such action. However, the record indicated that prior to the adoption of these two (2) amendments, Section 6E of the NFLPA Regulations provided for an automatic stay of the imposition of the Disciplinary Committee's "proposed disciplinary action" pending the appeal of that action.

The evidence demonstrated that the stay provision of Section 6E was already in place and operational in 2000. Thus, the stay provision was known to the drafters of the 2000 amendments to the CBA and the NFLPA Regulations when those amendments were adopted. Notwithstanding the existence of Section 6E, those amendments were silent on the issue of the stay. I find that such silence raises ambiguity as to the applicability of the stay to the provisions in the amendments regarding "immediate" decertification. When ambiguity exists as to the meaning of a document, outside evidence may be considered in order to establish the meaning and to resolve the ambiguity. Thus, in the present situation, it is necessary to consider evidence of the intent of the parties as to the meaning of these provisions.

Armstrong's unrefuted testimony established that the 2000 amendments to the CBA and the NFLPA Regulations were in the aftermath of the Tank Black litigation. That case involved a Contract Advisor who was engaged in fraud and misappropriation of players' monies, but nevertheless was permitted to continue representing players while his discipline was on appeal because of the automatic stay provision in Section 6E. Armstrong indicated that it was clear to the Board that such a situation was outrageous and must not occur in the future. He made clear that the Board wanted to provide for a means by which an appeal would not stay decertification, and so it adopted the March 2000 Amendment.

Armstrong also testified, without contradiction, that the Board's resolution, which became the March 2000 Amendment to the NFLPA Regulations, was not self-enforcing. Based on that knowledge, the substance of the Board's amendment was included in an amendment to the CBA that was re-negotiated in 2000; the change appears at Article VI, Section 1, as noted earlier in this decision.

In his testimony regarding the intent of the drafters as to the stay provision in Section 6E, Armstrong specifically stated that:

> The intent of the rule was to be able to prevent an agent from continuing an activity until his appeal was heard. The intent of the rule was to immediately revoke an agent's certification based on what the committee considered serious misconduct and still allow that person to appeal down the road.

Nothing could be clearer. Armstrong's testimony established that the goal of the 2000 amendments to the CBA and the NFLPA Regulations was to allow the Disciplinary Committee in

Nothing could be clearer. Armstrong's testimony established that the goal of the 2000 amendments to the CBA and the NFLPA Regulations was to allow the Disciplinary Committee in the presence of "extraordinary circumstances" to immediately decertify the representational activities of a Contract Advisor. As Armstrong pointed out, the drafters also intended to permit the Contract Advisor to appeal such action by the Disciplinary Committee. Armstrong stated, however, that the drafters' intent was that any appeal would occur after the Disciplinary Committee's immediate decertification.

Armstrong made clear that although the March 2000 Amendment provided for an appeal "pursuant to Section 6E" of the NFLPA Regulations, that statement referred only to the provisions in Section 6E dealing with how and when to file an appeal, but not to the stay provision of Section 6E. Armstrong's testimony on this point is supported by the principle of contract[3] interpretation which provides that a contract must be read in its entirety and in such a fashion that gives meaning to all of the provisions of the contract.

To the contrary, Weinberg argued that the stay provision was preserved even as to appeals from action taken by

3 While the NFLPA Regulations are not a "contract" the same principle applies to an analogous document, such as this set of rules.

argument is unpersuasive. The drafters clearly intended that the 2000 amendments to the NFLPA Regulations and to the CBA would preclude a stay of an immediate disciplinary action against a Contract Advisor. If Weinberg's position is upheld, the whole purpose and intent of those two (2) amendments would be vitiated.

Another principle of contract interpretation provides that provisions that are specific control over provisions that are general. The automatic stay provision in Section 6E applies to disciplinary actions. This is more general than the March 2000 Amendment, which applies directly to a specific disciplinary action, to wit: the "immediate" decertification in "extraordinary circumstances" for conduct of "a serious nature". Thus, the immediate decertification contained in the March 2000 Amendment controls over the stay provisions in Section 6E.

Based on the foregoing analysis, I conclude that the "immediate" decertification of a Contract Advisor by the Disciplinary Committee is not stayed by an appeal. Weinberg raised specific arguments disputing this conclusion. I address those arguments below.

Weinberg argued that there was no reliable or authoritative statement of the NFLPA Regulations. He pointed out that the evidence indicated that no fresh printing of the NFLPA Regulations had been made in more than four (4) years. He asserted that the web site was not reliable and/or current insofar as the text it maintained of these governing documents. He noted that he received a copy of Section 6B from Berthelsen which did not conform exactly to the language of Section 6B apparently published on the web site or to the language of Section 6B in the printed NFLPA Regulations. Weinberg contended, by implication, that he was not on notice of the applicable changes to the CBA and/or the NFLPA Regulations that eliminated the automatic stay when the Disciplinary Committee imposed immediate decertification in "extraordinary circumstances".

The record indicated that the NFLPA's web site was not always entirely current or accurate. The NFLPA acknowledged in its opposition to Weinberg's motion that no final text of the NFLPA Regulations has been printed since 1998. It indicated, however that an updated text of the NFLPA Regulations incorporating "all of the amendments passed since 1998" is being prepared, but that its distribution was awaiting "any changes the player reps choose to make at their annual meeting" in March 2003. Thus, the record demonstrates that there might be some different texts of Section 6B available from various sources. What is clear, however, is that the Board passed the March 2000

Amendment and distributed it to Contract Advisors in May 2000. The evidence establishes that such amendment made a change to the NFLPA Regulations and that such change was an enforceable rule by which Contract Advisors must abide.

In addition, Section 3A.(15) of the NFLPA Regulations imposes an obligation on Contract Advisors to "become and remain sufficiently educated with regard to NFL structure and economics, applicable Collective Bargaining Agreements and other governing documents, basic negotiating techniques, and developments in sports law and related subjects." Thus, Weinberg had a duty as a certified Contract Advisor to take what steps were necessary to maintain a thorough knowledge of the rules governing Contract Advisors. The March 2000 Amendment was distributed to Contract Advisors and changed the NFLPA Regulations. According to the NFLPA Regulations, Weinberg was obligated to be aware of that change.

Weinberg's actual knowledge of a change in the NFLPA Regulations would be significant if he were accused of violating a new provision of the NFLPA Regulations. That is not the case here. Indeed, the NFLPA Regulations which Weinberg is alleged to have violated have not changed since 1998. The provision which did change and of which Contract Advisors were notified in May 2000 dealt with the immediacy with which discipline was imposed by the Disciplinary Committee. The March 2000 Amendment to the NFLPA Regulations did not affect Weinberg's alleged violations of these rules, but rather the procedure by which discipline would be implemented.

Weinberg objected that the Disciplinary Committee decertified him in February 2003, not in November 2002, when it filed the Disciplinary Complaint against him. He argued that the text of Section 6B on the NFLPA's web site required that the Disciplinary Committee revoke or suspend his certification "with the filing of the Disciplinary Complaint", that is, at the same time that the Disciplinary Complaint is issued. This argument is unconvincing. In the first instance, the language in the text of Section 6B on which Weinberg relies is permissive, not mandatory; it provides:

> . . . the Disciplinary Committee may immediately revoke or suspend his/her Certification with the filing of the Disciplinary Complaint. * * * (Emphasis supplied)

Thus, the Disciplinary Committee was not required to decertify Weinberg "immediately", that is, at the same time as its November 2002 Disciplinary Complaint. The record demonstrated that in November 2002, the Disciplinary Committee gave Weinberg the opportunity to respond to the Disciplinary Complaint and to present his position regarding the allegations against him. It is clear that the Disciplinary Committee wanted to hear Weinberg's side of the story before it took any significant action. Providing Weinberg the opportunity to respond to the charges was not prejudicial to him; indeed, it was more beneficial to him to respond before the Disciplinary Committee decided what disciplinary action, if any, would be imposed.

Weinberg also contended that denying him the benefit of the automatic stay works a hardship on him because of the proximity of the free agency period, which starts on February 28, 2003. Without ruling on the timeliness issue, I note that at every stage of the proceedings, the process slowed or stalled because of Weinberg's unhurried and/or incomplete responses. Thus, Weinberg bears substantial responsibility for the timing of these proceedings and the timing of the decision on this motion was dictated significantly by Weinberg's own actions. Furthermore, while the proximity of the free agency period might create a harsh impact on Weinberg, that potential cannot stand in the way of the lawful decision on the motion. In this regard, I note also that letters from 15 NFL players represented by Weinberg were placed in evidence. These letters indicated that the players will be adversely affected if Weinberg is decertified. Notwithstanding the potential negative effects on Weinberg's clients cited in these letters, the applicability of the stay in this case must be evaluated on the basis of the relevant governing provisions in the NFLPA Regulations and the CBA.

The NFLPA challenged Weinberg's answer to the Complaint as untimely. I note the NFLPA's assertion that it faxed the Complaint to Weinberg on November 19, 2002 as well as the return receipt indicating receipt on November 29, 2002. When considering either date, the evidence established that Weinberg's responses to the Disciplinary Committee were made more than 30 days after the issuance of the Complaint, thereby exceeding the time limits imposed by the NFLPA Regulations.

Notwithstanding that Weinberg exceeded the 30 day time period, I find that the NFLPA was not prejudiced by his delayed responses. Therefore, I do not deem Weinberg to have "accept[ed]" the discipline imposed, as provided in Section 6E of the NFLPA Regulations, and resolve the motion as indicated herein.

****

ORDER

****

After considering all of the evidence presented at hearing and the arguments made, I find that:

1. The February 6, 2003 decertification of Steven Weinberg by the Disciplinary Committee is not stayed by the notice of appeal of that discipline filed by Steven Weinberg on February 7, 2003;

2. Steven Weinberg's Emergency Motion to Stay Disciplinary Action dated February 15, 2003 is denied.

DATED: FEB 26 2003

Roger P. Kaplan

Alexandria, Virginia

EX. 8
APP. 089 - 094

Briefs and Other Related Documents
Consorcio Rive, S.A. de C.V. v. Briggs of Cancun, Inc.E.D.La.,2000.Only the Westlaw citation is currently available.

United States District Court, E.D. Louisiana.
CONSORCIO RIVE, S.A. DE C.V.
v.
BRIGGS OF CANCUN, INC., et al
No. Civ.A. 99-2204.

July 24, 2000.

ORDER DISMISSING BRIGGS' COUNTERCLAIM AND WRITTEN REASONS

SCHWARTZ, J.

*1 Before the Court is plaintiff Consorcio Rive, S.A.'s ("Rive") Motion to Dismiss the defendant Briggs of Cancun, Inc.'s ("Briggs") counterclaims. The matter was thoroughly briefed the Court having received both formal opposition and a reply brief. The matter was noticed for hearing on July 19, 2000 but was deemed submitted for decision on the briefs. The Court has treated the plaintiff's Motion to Dismiss Briggs' Counterclaims as one for summary judgment since it raises matters outside of the pleadings. There being no disputed issues of material fact the Court grants plaintiff's motion and dismisses Briggs' counterclaims for the reasons set forth herein below.

CONTENTIONS OF THE PARTIES

Rive contends that its $2,500,000 plus Mexican arbitration award is *res judicata*, Briggs' counterclaims are barred, and in any event, its counterclaims in connection with the subject contracts must be arbitrated in Mexico per the written operative contracts.

Briggs filed formal opposition arguing first, that its counterclaim is not barred by *res judicata* since the subject arbitration award which Rive seeks to enforce is not a final judgment; [FN1] and second, that the arbitration agreement was terminated or waived.[FN2]

FN1. Briggs argument is that since the arbitration award has not been confirmed by any court, it can have no preclusive effect for purposes of *res judicata*.

FN2. The thrust of Briggs' argument is that when Rive terminated the contract/agreement, Rive also extinguished the obligation to arbitrate agreements arising out of the terminated agreements. Additionally, Briggs contends that Rive filed "procedural fraud claims" against Briggs and the alleged making of such fraud claims constitutes a waiver of Rive's right to insist on arbitration of disputes.

Rive formally replied to defendant Briggs' opposition noting whereas here there is a final judgment on the merits in the arbitration proceedings [Exhibit B to Rive's Complaint], identical parties, and the cause of action raised in arbitration and the judicial proceeding arise out of the same transaction or occurrence [that is, the October 1, 1991 Agreement (Exhibit A to Rive's Complaint}], then Briggs' counterclaims are barred as a matter of law. Rive further notes the Supreme Court case [FN3] which stands for the proposition that unless the contracting parties include a provision in the contract or agreement which would terminate the parties's contractual obligation to arbitrate all disputes arising out of the contract upon termination of the contract itself, the arbitration agreement is presumed to have survived the contract's termination. Finally, as to Briggs waiver argument, Rive notes the absence of any alleged "procedural fraud claims" in its complaint as well as the absence of any reference to any such procedural fraud claims in Briggs' counterclaim.

FN3. *Noble Brothers, Inc. v. Local No. 358,* 97 S.Ct. 1067, 1071-72 (1977).

BACKGROUND AND ANALYSIS

The instant case is an action filed by Consorcio Rive ("Rive") to enforce an arbitration award under Mexican law against the defendant Briggs.[FN4] Briggs' action for nullity filed in Mexico has been dismissed. Rive aptly argues that the counterclaim now filed by Briggs in the captioned matter is barred by *res judicata.*

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FN4. Briggs successfully negotiated with Briggs for use of its land leased from the Mexican Government. Briggs opened a restaurant in Cancun, Mexico on the government land. The Rive/Briggs agreement required that any dispute be arbitrated under Mexican law. Pursuant to one such dispute, in June of 1998, an arbitration panel in Mexico awarded the instant plaintiff Rive a total of more than $2,500,000.

It is not disputed that all three agreements entered into by the parties (i.e., the Agreement,FN5 then the Management FN6 and the Commodatum FN7 Agreements) called for dispute resolution by arbitration pursuant to the rules of the Inter-American Commercial Arbitration Commission and the laws of Mexico. All three agreements provide:

FN5. Briggs' Exhibit 1.

FN6. Briggs' Exhibit D.

FN7. Briggs' Exhibit C.

*2 Any controversy or claim arising out of, or related to, this agreement, or the making, performance, or interpretation thereof, shall be finally settled by arbitration pursuant to the then prevailing rules of the INTERAMERICAN COMMERCIAL ARBITRATION COMMISSION and the arbitrators shall be appointed in accordance with such rules. All arbitration proceedings shall take place in Monterrey, N.L., Mexico, and the laws applicable to the arbitration procedure shall be the laws of Mexico. The award of the arbitrator shall be the sole and exclusive remedy between the parties regarding any claims, counterclaims, issues, or accountings presented or pled to the arbitrator; shall be made and shall promptly be payable free of any tax, deduction, or offset; and any costs, fees, or taxes incident to enforcing the award shall, to the maximum extent permitted by law, be charged against any party resisting such enforcement. Judgment upon the award of the arbitrator may be entered in the court having jurisdiction thereof, or application may be made to such court for a judicial acceptance of the award or an order of enforcement. The prevailing party in any such arbitration shall be entitled to recovery of all administration fees and arbitration fees paid. All other costs expenses and fees incurred by either party in connection with such arbitration (including attorney's fees incurred) shall be borne by the party so incyurring[sic] such fees.

See, October 1, 1991 Agreement [Briggs' Exhibit 1].

Rive seeks enforcement of its $2,500,000 arbitration award. *Via* counterclaim, Briggs seeks to defend against such enforcement claiming that: (1) Rive defaulted on the FONATURE lease by failing to meet its rental obligations; (2) illegally subleased part of the property without permission; (3) failed to obtain adequate insurance; (4) failed to obtain a sufficient rental bond; and (5) all of the foregoing actions allegedly causing damage to Briggs.

The subject complaint to enforce the Mexican arbitral award against Briggs was filed by Rives pursuant to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "Convention"), codified at 9 U.S.C. § 201 *et seq.* Both Mexico and the United States are signatories of the Convention negotiated pursuant to the Treaty Power delineated in the United States Constitution. Congress passed enabling legislation making the Convention law, which must be enforced over all prior inconsistent rules of law.

Under Article III of the Convention, "[e]ach Contracting State shall recognize arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon...." An action or proceedings falling under the Convention is deemed to arise under the laws and treaties of the of the United States. 9 U.S.C. § 203. Federal district courts have original jurisdiction over such an action, and venue is proper in any district in which, save for the arbitration agreement, an action or proceeding with respect to the controversy between the parties could be brought, or in such district which embraces the place designated in the agreement as the place of arbitration if such a place is within the United States. 9 U.S.C. § 204.

*3 As plaintiff in this case aptly points out, according to the Convention recognition and enforcement may be refused if the party resisting enforcement proves one of the following under either Article V(1) or V(2), to wit:

ARTICLE V(1)

(a) -the parties to the agreement were under some incapacity, to the agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or

(b) -the party against whom the award is invoked was

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not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case; or
(c) -the award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration; however, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced; or
(d) -the composition of the arbitral authority or arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or
(e) -the award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law which, that award was made.
ARTICLE V(2)
(a) -the subject matter of the difference is not capable of settlement by arbitration under the law of that [the forum] country; or
(b) -the recognition or enforcement of the award would be contrary to the public policy of that [the forum] country.

None of the above available defenses to the instant complaint seeking to enforce the Mexican arbitral award in Rive's favor are the subject of Brigg's counterclaim. Instead, Briggs raises a panoply of allegations relative to Rive's alleged breach in 1995 of the parties' Agreement. The Agreement unambiguously provides that all claims must be raised in the arbitration proceeding including claims, counterclaims, issues, or accountings. According to the Agreement, arbitration is the sole and exclusive remedy. After initial papers were filed in the arbitration proceedings and having notice thereof, Briggs did not participate in the proceedings by asserting any available defenses, in the nature of set-off or otherwise, and did not counterclaim against Rive in the context of the arbitration proceeding.

In *Schlumberger Technology Corporation v. United States*, 195 F.3d 216, 220 (5th Cir.1999), the Fifth Circuit took great pains to explain the difference between when the right to receive/execute vests under an arbitral award and when an arbitral award is final/*res judicata* such that a foreign court may not alter the award. The *Schlumberger* court explained that "even though a foreign arbitral award is *res judicata* between the parties as to the merits (and a foreign court cannot alter the award) that court can refuse to enforce the award...." *Id.* Simply stated, confirmation of the foreign arbitral is not necessary for purposes of its *res judicata* effect. However, the final award (*i. e.*, final for purposes of *res judicata*) is not self-executing. The fixed right to receive does not exist with respect to a foreign arbitral award until it is converted by confirmation into a judicial judgment.

*4 In this decision, the term *res judicata* refers to "claim preclusion"-that is, the preclusive effect of a judgment/final foreign arbitral award in foreclosing litigation of matters that were or could have been raised in the earlier arbitration. This concept is to be distinguished from "collateral estoppel" or issue preclusion, which refers to the effect of a judgment in foreclosing relitigation in a subsequent action of an issue of law that has been actually litigated and decided in the initial proceeding.[FN8] Both doctrines (*i. e.*, *res judicata* and collateral estoppel) apply to arbitration awards.[FN9]

FN8. See, *Marrese v. American Academy of Orthopaedic Surgeons*, 105 S.Ct. 1327, 1329 n. 1 (1985); *Bremer v. Chemical Construction Corp.*, 102 S.Ct. 1883, 1886, n. 6 (1982).

FN9. *Benjamin v. Traffic Executive Association Eastern Railroads*, 869 F.2d 107 (2nd Cir.1989).

In the case at bar, it cannot be seriously disputed that the arbitration award with accompanying written memorandum [FN10] is a final decision on the merits and that Briggs was a party to that proceeding. The doctrine of res judicata operates to bar claims where a party had a full and fair *opportunity* to litigate. Briggs had the opportunity to litigate its counterclaims in the arbitration proceedings. Briggs received notice of the arbitration proceedings and even filed an answer. Briggs, however, did not participate thereafter, and Rive proceeded with the arbitration and obtained a substantial award in its favor.

FN10. Exhibit B of Rive's Complaint.

Unquestionably, Briggs' counterclaims which arise out of the same transaction/occurrence, involves the same Agreement with respect to the very same property. Clearly the facts are related in time, space,

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origin and motivation, that is because they arise out of the same contractual agreement previously examined by the Mexican arbitrators.

The facts before this Court present no ambiguity. Although Briggs was aware of its counterclaims, such were not presented to the arbitrators. The arbitrators did not refuse to consider Briggs' counterclaims, prevent Briggs from making any counterclaim or preclude Briggs' participation in proceedings before the arbitration panel. Briggs, having notice of the proceedings, simply answered and did not participate in the arbitration proceedings thereafter. Briggs never presented any of his counterclaims to the arbitration panel.[FN11]

FN11. Defense counsel's argument admits as much, he writes:
[T]here is no evidence to suggest that Briggs' counterclaims were ever considered by the panel. Briggs filed an Answer in the arbitration proceedings which presented its defenses to Rive's claims. There were no further pleadings filed by Briggs in those proceedings alleging counterclaims for Rive's breaches of the Agreement. In making its award, the arbitration panel addressed only those issues raised by Rive's claims, and did not include any reference to the counterclaims alleged by Briggs in this action.
Briggs' Memorandum in Opposition, p. 9.

Briggs' counterclaims could have been and should have been raised in the original arbitration. Regardless of the approach, whether transactional or utilizing the standard set forth for compulsory counterclaims in FRCP Rule 13a, both of which comport with purposes of the arbitration and the *res judicata* doctrine, Briggs' counterclaims are barred.

Long-ago the United States Supreme Court shot down the argument that defense counsel now makes (*i. e.*, that the duty to arbitrate necessarily expires with the contract that brought it into existence). Rejecting that argument in *Nolde Bros., Inc. v. Local No. 358, Bakery and Confectionery Workers Union, AFL-CIO*, 97 S.Ct. 1067, 1071-72 (1977), the Supreme Court observed that:
Carried to its logical conclusion that argument would preclude the entry of a post-contract arbitration order even when the dispute arose during the life of the contract but arbitration proceedings had no begun before termination. The same would be true if arbitration processes began but were not completed, during the contract's term. Yet it could not seriously be contended in either instance that the expiration of the contract would terminate the parties' contractual obligation to resolve such a dispute in an arbitral, rather than a judicial forum.

***5** *Id.*

It is thus well-settled that contracting parties' obligations under the arbitration clause survive contract termination unless the agreement itself otherwise indicates. Regardless of which agreement the Court refers to in the instant case,[FN12] where as here the dispute is over an obligation arguably created by the terminated agreement, the obligation to arbitrate survives and Briggs must bring its counterclaims in arbitration, since a lawsuit is the antithesis of the Agreement of the parties. *Id.*

FN12. All three agreements set forth identical arbitration clauses as mentioned at the outset.

In other words, the fact that Briggs' waited until after the Agreement was terminated and the arbitration award was final to bring its counterclaims is not dispositive of their arbitrability. More to the point, contract termination does not control arbitrability. Finally, Briggs points to nothing which would support construing the Agreement of the parties to mean that their obligation to arbitrate disputes arising under the contract would expire upon termination of the Agreement itself.

Similarly the Court is not persuaded by Briggs' one-paragraph waiver argument. Briggs' submission is devoid of any documentary or other evidentiary support which would support a finding of waiver. The only exhibits filed in opposition to Rive's Motion to Dismiss Counterclaim were: (1) Briggs' Exhibit 1-the October 1, 1991 Agreement with attachments, (2) Briggs' Exhibit 2-the Fonatur Lease, (3) Briggs' Exhibit 3-Acta De Entrega-Recepcion, and (4) Briggs' Exhibit 4 and 5-this Court's November 5th, 1999 Order and Reasons and January 28, 2000 Order and Reasons entered in the captioned action to enforce arbitration award. The Court cannot ignore the fact that even the defendant's counterclaims do not address the alleged "procedural fraud claims" filed in some Mexican civil court. Briggs attaches no documents and draws this Court's attention to no evidence other than its bare assertion that Rive waived its right to arbitrate. On the slim thread of

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argument, the Court cannot find Rive waived its right to arbitrate. On that issue Briggs bears the burden of proof.

"Waiver of arbitration is not a favored finding and there is a strong presumption against it." FN13 Moreover, any doubt must be resolved in favor of arbitration.FN14 which would trump a finding of waiver based upon this record-a record which is devoid of any evidentiary support for the Briggs assertion. Briggs bears the burden of proof and has not begun to prove the existence of an earlier Mexican *civil* FN15 action filed by Rive against Briggs with respect to the Agreement. Simply stated, the defendant Briggs has not come forward with so much as one iota of evidence of one civil action filed by Rive in Mexico earlier than or contemporaneous with the arbitration proceedings. Rive's present action is in fact aimed at enforcing the Mexican arbitration award in its favor which is considered final under the applicable law.

FN13. See, *Lawrence v Comprehensive Business Services, Co.*, 833 F.2d 1159, 1164 (5th Cir.1987).

FN14. *Id.* (citing *Moses H. Cone Memorial Hospital*)

FN15. There is no evidence in the record which indicates that there was ever a civil suit filed in Mexico against Briggs. The Court however notes that the arbitration panel's decision mentions the existence of a *criminal* record, the "Defintive Laudum" reads in pertinent part:
Notwithstanding that during the development of the arbitration both were given a legitimate defense opportunity, the filing of evidence which they deemed convenient and that of allegations, the defendant did not submit enough evidence to disprove the complementary claims by the Plaintiff, besides the defendant refused to participate in the arbitration because of *criminal* records....
See, Arbitration Panel Decision entitled "Definitive Laudum," [Exhibit B to Rive's Complaint] (emphasis added).

For all of the above and foregoing reasons, this Court believes that plaintiff's counterclaims are barred.

***6** Accordingly,

IT IS ORDERED that the defendant Briggs' Counterclaim is DISMISSED since it is barred by *res judicata.*

E.D.La.,2000.
Consorcio Rive, S.A. de C.V. v. Briggs of Cancun, Inc.
Not Reported in F.Supp.2d, 2000 WL 1023420 (E.D.La.)

Briefs and Other Related Documents (Back to top)

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- 2002 WL 32944322 (Trial Motion, Memorandum and Affidavit) Memorandum in Opposition to Plaintiff's Ex Parte Motion to Order Sale of Stock Certificate (Jul. 8, 2002) Original Image of this Document (PDF)
- 2002 WL 32944321 (Trial Motion, Memorandum and Affidavit) Plaintiff's Motion to Reconsider, or Alternatively Amend or Alter, Order Denying Rule 60(b) Motion (May 1, 2002) Original Image of this Document with Appendix (PDF)
- 2001 WL 34849360 (Trial Motion, Memorandum and Affidavit) Plaintiff's Memorandum Pursuant to this Court's Minute Entry Dated November 14, 2001 (Nov. 26, 2001) Original Image of this Document with Appendix (PDF)
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- 2001 WL 34849357 (Trial Motion, Memorandum and Affidavit) Memorandum in Opposition to Plaintiff's Motion for Writ of Garnishment against Briggs of Memphis, Inc. (Oct. 5, 2001)
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